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July 24, 2008

**Via Hand Delivery**

Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination & Legal Administration  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

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COUNSEL

**In the Matter of Connolly for Congress – MUR No. 6022**

Dear Mr. Jordan:

This firm represents Gerry Connolly and Connolly for Congress ("Connolly Parties") in connection with the complaint ("Complaint") filed with the Federal Election Commission ("Commission") by Leslie Byrne for Congress ("Byrne"). The matter has been designated by the Commission as MUR No. 6022. The Commission granted an extension to the parties to the Complaint to submit response on or before July 24, 2008.<sup>1</sup>

The Complaint is meritless. It provides little factual support for its allegations, and none at all for its allegations against the Connolly Parties. Moreover, the Complaint demonstrates a misunderstanding of the "knowing acceptance" standard, and to what situations it should be applied to create liability for the acceptance of wrongful contributions. The Complaint was hastily crafted and filed for political purposes to create bad press against Connolly during a contentious primary. The Commission should take no action in regards to the Connolly Parties in connection with the Complaint. In support of this request, the Connolly Parties state as follows:

<sup>1</sup>

The Connolly Parties never received formal service of the Complaint from the Commission. After learning of its existence, a representative of the campaign contacted the Commission voluntarily, and received a copy of the Complaint by facsimile on July 7, 2008. Permission for all parties to respond to the Complaint on or before July 24, 2008 was communicated to counsel for SAIC by the Commission, and communicated to undersigned counsel by counsel for SAIC.

**I. The Complaint Has No Basis in Fact as to the Connolly Parties**

The Complaint is devoid of factual allegations against the Connolly Parties. This is so because no basis for a complaint against the Connolly Parties exists. Byrne's failure to provide the Commission with any factual support for her speculative claims should result in a finding of no action as to the Connolly Parties.

**A. Factual Allegations of the Complaint**

Leslie Byrne and Gerry Connolly were two of four candidates for the Democratic Party nomination for United States Congress in the Eleventh District of Virginia in 2008. The primary election was held on June 10, 2008. The Complaint was filed by Byrne only days before the primary election, on or about June 4, 2008.<sup>2</sup>

The Complaint centers on an e-mail sent on May 14, 2008 by a former colleague of Connolly at SAIC, Robert Rosenberg.<sup>3</sup> Rosenberg is alleged to be a "consultant employee" of SAIC. Complaint at ¶7. The e-mail is attached to the Complaint as "Exhibit 1."

The e-mail is alleged to have been sent from Rosenberg's SAIC e-mail account, distributed to an unspecified e-mail list, and carbon copied to two other employees of SAIC. Complaint at ¶4. The e-mail asks the recipients to support Connolly, and invites them to contribute and attend a fundraiser being hosted by another organization the following week. *Id.* Multiple SAIC employees are alleged to have attended the fundraiser, and a total of \$3,700 raised from SAIC employees in the course of the primary election (including at the fundraiser). Complaint at ¶8.

**B. The Complaint Makes No Factual Allegations Regarding the Connolly Parties**

Most telling about the Complaint is its utter lack of any specific factual allegations regarding the Connolly Parties. The only averments concerning the Connolly Parties are contained in Paragraph 11, which starts with the tell-tale phrase "on information and belief," a certain indicator of speculative and unsupported factual claims by a party.

In Paragraph 11, Byrne alleges that Rosenberg took his actions "at the urging of and with the cooperation of Connolly for Congress," and that Gerry Connolly was "aware the illegal activities were to take place and personally sanctioned these efforts." Complaint at ¶11. As sole support for these allegations, Byrne attaches an article from the *Washington Post* newspaper concerning the Rosenberg e-

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<sup>2</sup> The precise date of the creation of the Complaint is unclear, as it bears a notary date of May 2, 2008, but refers to events that allegedly took place after that date. This is but one of many obvious errors and inconsistencies in the Complaint.

<sup>3</sup> The Connolly Parties, on whose behalf this response is filed, have no knowledge of the factual circumstances surrounding Rosenberg's e-mail and actions other than those provided herein.

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mail and Byrne's attendant accusations. In the article, Connolly is quoted as saying he "was aware of the fact that [Rosenberg] was going to organize something for some SAIC employees who wanted to be supportive." See Complaint, Exhibit 2.

**C. There is No Factual Basis For a Complaint Against the Connolly Parties**

The explanation for the Complaint's lack of factual support as to the Connolly Parties is simple: no supporting facts exist.

When Connolly announced his run for Congress, Rosenberg mentioned to Connolly that he wanted to organize something to support his campaign. Their conversation was general and vague, and not pursued further by either. Subsequently, Connolly received the May 14 e-mail sent by Rosenberg. Connolly knew nothing further about who received the e-mail, and neither he nor the campaign knew anything about the communication prior to Connolly's receipt of it.

Connolly's innocuous statement in the *Washington Post* article is the entirety of the facts at hand as regards the Connolly Parties. It describes the full extent of his general and brief conversation with Rosenberg. Moreover, the statement directly contradicts the allegations made by Byrne. Connolly states that he was aware that Rosenberg was going to organize *some* employees (obviously a limited number) who wanted to be supportive of him – no more, no less. The statement certainly provides no basis for Byrne's suspicion that Connolly and Rosenberg conspired to violate the Commission's regulations.

**II. There is No Legal Basis For a Claim Against the Connolly Parties**

In addition to its factual infirmities, the Complaint lacks legal merit. Byrne's application of 11 C.F.R. §114.2 misconstrues the standard the Commission has created to impose liability on a campaign for accepting contributions that violate restrictions on federal contributions. Even if the contributions were made contrary to legal limitations (the Connolly parties have no knowledge that would suggest that they were), the standard for treasurer liability for such contributions would not support liability for the Connolly Parties.

The Connolly Parties are named only in the first count of the Complaint. That count alleges that the Connolly Parties violated the law by "knowingly accepting or receiving any contribution prohibited by 11 C.F.R. §114.2."

The "knowing acceptance" standard of Section 114.2 was elaborated upon by Commissioner Thomas in his Statement of Reasons for In re: Democratic National Committee. Essentially, treasurers are not obligated to investigate the legality of every contribution. They are only obligated to investigate contributions that "raise genuine questions" of legality from the perspective of a "reasonable treasurer."

In FEC v. Re-Elect Hollenbeck to Congress Committee, Civ. Action No. 85-2239 (D.D.C. 1986) (unpublished opinion), the Hollenbeck Committee accepted a \$5,000 donation from the New Jersey Republican State Committee. Because the NJRSC had not yet qualified for multicandidate committee

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status, it was only eligible to contribute \$1,000. The court dismissed the Commission's case against the Hollenbeck Committee, reasoning that the \$5,000 contribution would have appeared legal to any reasonable treasurer. See also FEC v. Damesi for Congress Committee, 640 F. Supp. 985 (D.N.J. 1986) (treasurers are obligated to investigate only contributions that seem illegal "at first blush"); FEC v. Friends of Jane Harman, 59 F.Supp. 2d 1046 (C.D. Cal. 1999) (campaign was not required to pay civil penalties or disgorge prohibited contributions because there was no evidence it knew it had violated the law).

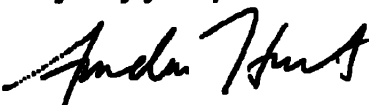
Byrne's Complaint demonstrates a fundamental misunderstanding and misapplication of the standard. Byrne alleges merely that the Connolly Parties were aware of, and encouraged, Rosenberg's interest in organizing an event for supportive SAIC employees. She pleads no specific facts that should have triggered scrutiny of the contributions by a reasonable treasurer. As in Re-Elect Hollenbeck, when the Connolly Parties received contributions from SAIC employees (\$3,700 in total during the primary season), there are no facts alleged that would give the treasurer reason to suspect the contributions were solicited in violation of the Commission's regulations.

### III. Conclusion

We ask the Commission to take no action against Connolly based on the Complaint. The Complaint has no basis in fact or law, and was clearly filed for political purposes. The Commission should not waste any more of its resources on this matter.

We are available to provide further information or discuss the matter further at the Commission's discretion. Please contact the undersigned.

Very truly yours,



Andrew L. Hurst

ALH:od

Enclosure: Designation of Counsel Statement

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## FEDERAL ELECTION COMMISSION

999 E Street, NW

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STATEMENT OF DESIGNATION OF COUNSEL  
 Please use one form for each Respondent/Client.  
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The above-named individual and/or firm is hereby designated as my  
 counsel and is authorized to receive any notifications and other communications  
 from the Commission and to act on my behalf before the Commission.

7/24/08  
 Date

James Walker  
 Respondent/Client Signature

Campaign Manager  
 Title

RESPONDENT/CLIENT James Walker  
 (Please Print)

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Information is being sought as part of an investigation being conducted by the Federal Election  
 Commission and the confidentiality provisions of 2 U.S.C. § 4379(b)(1)(A) apply. This section  
 prohibits making public any investigation conducted by the Federal Election Commission without  
 the express written consent of the person under investigation.

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